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STATE FOR WHA/BSC, CA/OCS

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TAGS: [CASC](#) [EAIR](#) [PREL](#) [BR](#)
SUBJECT: UPDATE ON LEGACY PILOTS

REF: Brasilia 2475 and previous

Classified By: Classified by CG Simon Henshaw, reasons 1.5 b and

¶1. (C) Summary. The Embassy believes that it is only a question of when, not if, the Legacy pilots, involved in the September 29 collision that led to the crash of a GOL Boeing 737 and the deaths of all 154 persons aboard, are allowed to leave Brazil. While frustrated with the slow pace of events, the Embassy does not want to take any steps that could jeopardize this outcome. The chief investigator in the criminal case has stated that he expects the pilots to be able to depart as of December 13. End Summary.

¶2. (C) Embassy believes that the Brazilian courts, police, and government are ready to let the Legacy pilots leave the country, but that the cumbersome Brazilian legal process is making this take more time than it should. In short, the GOB is where, but not when, we want it. We believe, however, that there is a good chance that the Federal Court of Appeals in Brasilia will rule in favor of the pilots' habeas corpus petition (allowing them to depart Brazil) within the next two weeks.

¶3. (U) According to November 29 Brazilian press reports, Renato Sayao, the Federal Police Delegate in charge of the criminal investigation, said the pilots will be free to leave the country as of December 13, after he had depose them and completed his report. He had planned to do so depose them a month ago, after deposing the flight controllers, but his timetable was thrown off by the controllers' refusal to meet with him. He has now concluded the controllers' interviews and plans to meet with the pilots the week of December 4. Press quoted Sayao as saying that the pilots could still be indicted for not following their flight plan, but also that they had not done anything wrong as he first suspected.

¶4. (SBU) When contacted by the Embassy the same day, Sayao said that it was unlikely, but still possible the pilots could be indicted. He added that the "odds" were that the flight controllers would be blamed for the accident. Even if indicted, Sayao said the pilots would probably be allowed to leave, though adding that this was the court's decision, not his. Sayao appeared to be tired of the whole affair. He plans to take 30 days leave beginning December 4, turning the case over to his deputy.

¶5. (U) Public opinion, at first highly critical of the Legacy pilots has swung towards their favor, especially after a series of articles in Brazil's Veja magazine and Brazil's more responsible newspapers detailing the actual events of the crash. It would be hard to find a Brazilian that would now blame the pilots.

¶6. (C) The Embassy's lawyer (strictly protect), based in Sao Paulo and an associate of the pilots' Brazilian law team, has

stressed to us that the decision to allow the pilots to leave Brazil rests with the judicial and not executive branch of the Brazilian government. He has warned us of applying too much pressure on the courts, saying that they are proud of their independence and usually do not yield to such pressure, sometimes even producing the opposite decision to prove their independence. He did not offer a prediction on whether the appellate court would rule in the pilots favor, but said that the pilots' Brazilian lawyer (a son of a former Minister of Justice) believes that if he fails at the appellate court he will prevail at the next level, the Superior Tribunal of Justice. Our lawyer suggested that if the pilots appeal is rejected at the appellate level, we consider a discrete approach to the Ministry of Justice, asking them to in turn contact the Superior Tribunal.

¶7. (C) Comment: As reported reftel, the MFA has already contacted two of the justices on the appellate court on our behalf. We do not believe that further pressure from us will produce positive results and could possibly produce the opposite. However, the Embassy does not object to Washington approaches the Brazilian Embassy as this could be portrayed as a companion visit to our already completed demarche and not additional pressure.

¶8. (C) Comment continued: The Embassy shares the frustration over the way this investigation has been handled, but believes that complaints about how it was handled and the utility of beginning a criminal investigating so early best wait until the pilots have left Brazil.

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